

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates additional added text, and ~~striketrough~~ indicates additional deleted text.

Chapter 1.

3000. Definitions.

Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations.

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Senate Bill (SB) 618 Participant means an adult inmate who is deemed eligible and agrees to participate in a SB 618 Program, as defined in section 3000, which includes that prior to reception by the California Department of Corrections and Rehabilitation, the inmate will be assessed and classified at the county in which he or she is adjudged to have committed his or her crime.

Senate Bill (SB) 618 Program means a program developed for nonviolent felony offenders pursuant to SB 618 (2005/2006 session), which added Penal Code section 1203.8, which provides in part that programs shall be available for inmates, including vocational and educational programs that are designed to prepare nonviolent felony offenders for successful reintegration back into the community.

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Note: Authority cited: Sections 2717.3, 5058 and 5058.3, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 4570, 5009, 5054, 5068, and 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; In re Bittaker, 55 Cal.App. 4th 1004, 64 Cal. Rptr.2d 679; and Section 11007, Health and Safety Code.

3043.6. Impact of Transfer on Credit Earning.

Subsections 3043.6(a) through (a)(2) are unchanged.

Subsection 3043.6(a)(3) is amended to read:

(3) An inmate in a vocational/training program at the sending institution shall be assigned the same or similar program, if eligible, at the receiving institution unless the program has no vacancy, or the program is unavailable. If the receiving institution's program is full or unavailable, the inmate shall be placed on any existing waiting list. If eligible, inmates on waiting lists at sending institutions shall be merged into

the receiving institution's waiting list based on credit earning status, release date, and the length of time they have spent on the sending institution's waiting list. Inmates who are day-for-day eligible per Penal Code section 2933 shall be given priority for assignment with the exception of Senate Bill (SB) 618 Participants who, as defined in section 3000, pursuant to the provisions of subsection 3077.3(b)(1), and subject to the provisions of 3077.3(f), shall be placed at the top of an institution's waiting list and given priority for assignment. Inmates shall be merged into the receiving institution's waiting list in the following manner:

Existing subsection 3043.6(a)(3)(A) is renumbered 3043.6(a)(3)(B) and is amended.

New subsection 3043.6(a)(3)(A) is adopted to read:

(A) First, SB 618 Participants. Those SB 618 Participants having the earliest release date shall be given first priority.

~~(AB) First~~ Second, those inmates who are day-for-day credit eligible, approved for the program and are not assigned, Work Group A-2. Inmates eligible to earn credits per Penal Code section 2933 shall be given second priority for placement on waiting lists and the inmate with the earliest release date shall be given ~~first~~ priority.

Existing subsections 3043.6(a)(3)(B) and (a)(3)(C) are renumbered 3043.6(a)(3)(C) and (a)(3)(D) respectively, and are amended to read:

~~(BC) Second~~ Third, inmates who are day-for-day credit eligible and are already designated Work Group A-1. Inmates eligible to earn credits per Penal Code section 2933 shall be given next priority for placement on waiting lists and the inmate with the earliest release date shall be given ~~first~~ priority.

~~(CD) Third~~ Fourth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are already designated Work Group A-1. Inmates will be placed on waiting lists based upon the work group effective date.

Existing subsection 3043.6(a)(3)(D) is renumbered new subsection 3043.6(a)(3)(E) and is amended to read:

~~(DE) Fourth~~ Fifth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are not assigned, Work Group A-2. Inmates will be placed on waiting lists based upon the work group effective date.

Subsections 3043.6(b) through 3043.6(f) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.8, 1364, 2684, 2690, 2933, 2933.3, 5054 and 5068, Penal Code.

Chapter 1.

New Article 6.7 is adopted.

Article 6.7. Transfer of Inmate Assessment Responsibility

New section 3077 is adopted to read:

3077. County Assessment Program.

The California Department of Corrections and Rehabilitation (CDCR), pursuant to the provisions in sections 3375 through 3379, provides upon reception, an assessment and classification process to each person committed to the custody of the CDCR. Exception to this are Senate Bill (SB) 618 Participants, as defined in section 3000, who will be participating in a SB 618 Program, as defined in section 3000. Pursuant to the authority and process as described in this section, SB 618 Participants, prior to reception by the CDCR, shall be assessed by the county in which the offender is adjudged to have committed his or her crime.

(a) Assessment transfer authority. Pursuant to Penal Code (PC) section 1203.8, the CDCR is authorized to enter into an agreement with up to three counties in the State of California to carry out the assessment of nonviolent felony offenders and to develop a multi-agency plan (MAP).

(1) The MAP shall be developed at the participating county and subject to the approval of the CDCR, will be the general plan and agreement permitting the transfer of the assessment responsibility to the county. The MAP shall be developed by and have the concurrence of the following local county representatives or their designees, which shall include:

(A) The presiding judge.

(B) The chief probation officer.

(C) The district attorney.

(D) The county defense agency.

(E) The local custodial agency (e.g. sheriff).

(2) The MAP shall be submitted to the Board of Supervisors for approval.

(b) Inmate eligibility. An eligible offender may voluntarily participate in a SB 618 Program. To be eligible, the offender must meet the following criteria:

(1) Is convicted in the current case of a non-violent felony.

(2) Must be in custody to participate with no convictions under PC section 667.5(c) except as provided in subsection 3077(d)(1).

(3) Is a legal resident of the participating county at the time of his or her conviction (county of last legal residence).

(4) Is sentenced to a state prison for a period of 7 and 72 months with time to serve remaining to permit commencement and completion of programming of no more than 36 months or less than 4 months.

(5) Is able to live independently in the General Population (GP) of the participating institution independent of housing designation.

(6) Has a classification score below 52 points.

(c) Exclusionary criteria. An offender is excluded from participating in the SB 618 Program if he or she:

(1) Is a documented and validated prison gang, or disruptive group member or associate.

(2) Has a prior conviction where the offender's victim(s) suffered death, disability, or serious injury.

(3) Has any history of sex or arson offenses subject to registration pursuant to PC sections 290 and 457.1.

(4) Has a United States Immigration and Customs Enforcement hold from countries without immigration treaties.

(5) Possesses outstanding or active felony holds from other jurisdictions.

(6) Qualifies for participation in a drug treatment program as defined in PC section 1210.

(7) Repeat offenders with a new sentence and who are offered a probationary sentence are not automatically excluded from consideration for participation in the SB 618 Program upon approval of the court.

(d) Discretionary factors. The following are discretionary factors that will be taken into consideration when determining on a case-by-case basis, SB 618 Program eligibility:

(1) Prior convictions for PC section 667.5(c). Where a defendant has been out of custody for no less than five years and has committed no other violent felony as defined under Penal Code section 667.5(c), prior convictions for violent felonies under Penal Code section 667.5(c) that do not involve death, great bodily injury or permanent disability will be screened for SB 618 eligibility on a case-by-case basis.

(2) Repeat offenders as described in 3077(d)(1) with a new offense who pick up a new prison term are not automatically excluded from consideration for participation in the SB 618 Program upon recommendation of the court with concurrence of CDCR.

(3) Parole violators with a new term, who before parole were SB 618 Participants, are automatically excluded from consideration for participation in the SB 618 Program.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8, and 5054, Penal Code.

New section 3077.1 is adopted to read:

3077.1. Senate Bill 618 Program Participant Determination, Assessment, and Processing

(a) When an offender is arrested and charges filed, the participating county district attorney (DA) will conduct preliminary screening for Senate Bill (SB) 618 Program eligibility utilizing the criteria provided in subsections 3077(b), (c) and (d). If the offender is identified as a possible SB 618 Participant, as defined in section 3000, the DA, defense attorney, and court shall affirm eligibility for the SB 618 Program, as defined in section 3000. If eligibility for participation is approved by the court, the offender will be petitioned to voluntarily participate in the SB 618 Program. If the offender agrees, the court will refer the case to county probation for pre-sentence investigation, multidisciplinary assessment, and the development of a Life Plan, as described in subsection 3077.1(b). Within 3 working days of the court referral, the offender will be transported to a predetermined county site for assessment by a Multi-Disciplinary Team (MDT).

(1) The MDT shall include the following:

(A) County Probation Officer.

(B) Community Case Manager (CCM) who will assist the SB 618 Participant in the community to which he/she is released and will help to develop a community reentry plan with the SB 618 Participant, his/her family, treatment and social service providers, and community support persons.

(C) Correctional Counselor (CC) I. A CCI from a California Department of Corrections and Rehabilitation (CDCR) institution, who at the county facility, will provide the SB 618 Participant with a preliminary classification in accordance with the classification requirements pursuant to sections 3375 through 3379. Upon classification determination, the CCI will recommend placement to the appropriate CDCR institution.

(D) Prison Case Manager (PCM). The PCM shall be a licensed Clinical Social Worker, or other professional social work classification such as a Bachelor or Master's degree in Social Work. The PCM

will work with the SB 618 Participant from time of assessment at the county facility to parole release.
The PCM is a member of the CDCR institution's Multidisciplinary Team.

(2) The MDT may also include the following:

(A) An education specialist who is a subject matter expert on educational and vocational assessment, testing and programs.

(B) A licensed mental health clinician who is a subject matter specialist on mental health and substance abuse screenings, assessments and treatments.

(C) Medical staff, which will include but not be limited to, doctors, nurse practitioners, nurses, dentists, optometrists, and medical technical assistants. Medical staff may perform medical assessments pursuant to the provisions of section 3077.2.

(b) The Life Plan. The SB 618 Participant's Life Plan will be a plan based on the assessed needs of the offender which shall outline the inmate's specific programming needs and act as a guide for the SB 618 Participant from sentence and incarceration through release on supervised parole. The Life Plan, which may be referenced differently at each participating county (e.g. Case Plan, Participant Plan, etc.), shall be developed by and have the concurrence of the participating county's MDT.

(1) The Life Plan shall:

(A) Include, but not be limited to, the SB 618 Participant's court recommended behavioral health treatment, education literacy, and vocational needs.

(B) Include a recommendation for completion while in state prison, all programs to address those needs identified in the assessment.

(2) The CDCR, to the extent feasible, shall provide to the SB 618 Participant, all programs pursuant to the Life Plan recommendations.

(c) Within 23 days of the court referral, the following will occur:

(1) The SB 618 Participant's Life Plan, as described in subsection 3077.1(b), shall be developed.

(2) The county probation officer will include the Life Plan with the pre-sentence report and return it to the court.

(d) Within 28 working days post conviction, the court will affirm the Life Plan recommendations and sentence the participant to state prison.

(e) Within 14 working days after sentencing, the SB 618 Participant shall be transported to the appropriate CDCR institution for placement.

(f) All SB 618 Participants in substance abuse programs will be subject to random drug testing pursuant to the provisions of section 3290.

(g) Upon the SB 618 Participant's arrival at the institution's reception center (RC), the SB 618 RC CCI will review the SB 618 Participant's Life Plan, complete the casework and recommend endorsement for placement into the General Population. The case will be presented to a Classification Staff Representative for endorsement with the SB 618 Participant in RC status.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8, and 5054, Penal Code.

New section 3077.2 is adopted to read:

3077.2 Senate Bill 618 Participant Medical, Dental, and Mental Health Assessments

(a) For each county participating in the Senate Bill (SB) 618 Program, as defined in section 3000, and pursuant to California Department of Corrections and Rehabilitation (CDCR) and Division of Correctional Health Care Services medical, dental, and mental health court or Receiver ordered requirements, regulations, policies and procedures, the following assessments may be performed at an appropriate county facility for each SB 618 Participant, as defined in section 3000:

(1) Medical assessments. As permitted by the Medical Care Receiver, all applicable medical tests and assessments, including tuberculosis and other tests as necessary relating to communicable diseases and other medical conditions, may be performed by one or more of the following:

(A) CDCR medical staff.

(B) County medical staff.

(C) County contract medical staff.

(2) Dental screening, as permitted by the court, may be performed by one or more of the following:

(A) CDCR dental staff.

(B) County dental staff.

(C) County contract dental staff.

(3) Dental training. The CDCR Dental Quality Management Assessment Team staff or designee shall schedule and provide any necessary training for county dental staff or county contract dental staff on-site at the appropriate county correctional facility. Any necessary materials or supplies, as needed, shall also be provided to county dental staff or county contract dental staff.

(4) Mental health evaluations, as permitted by the court, may be performed by one or more of the following:

(A) CDCR mental health staff.

(B) County mental health staff.

(C) County contract mental health staff.

(b) After the arrival of the SB 618 Participant at the appropriate CDCR institution's reception center, CDCR medical staff shall:

(1) Complete as necessary, the medical history and physical exam.

(2) Complete all required medical, dental, and mental health assessments within mandatory time frames.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8, and 5054, Penal Code; Title 15, CCR, §3350(b)(1); Title 15, CCR, Articles 8, Medical and Dental Services; Title 15, CCR Article 9, Mental Health Services; *Coleman v. Schwarzenegger* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; *Plata v. Schwarzenegger* (No. C01-1351 TEH), U.S. District Court, Northern District of California; and Settlement Agreement, *Perez v. Tilton, et al.*, Case No. C05-5241 JSW, U.S. District Court, Northern District of California.

New section 3077.3 is adopted to read:

3077.3 Senate Bill 618 Participant Institutional Programming

(a) Within 14 days from the time the Senate Bill (SB) 618 Participant, as defined in section 3000, is endorsed by the respective institution, the SB 618 Participant will be seen by the Initial Classification Committee who will ensure that the SB 618 Participant is assigned to the appropriate program(s) according to his or her Life Plan as described in subsection 3077.1(b).

(b) Upon completion of the Initial Classification Committee, the Inmate Assignment Office shall assign the SB 618 Participant into assignments that correspond with his or her Life Plan.

(1) If there are no vacancies available in appropriate work/training assignments, the SB 618 Participant shall be placed at the top of the waiting list for assignment. SB 618 Participants having the earliest release date shall be given priority.

(2) A Classification Committee action shall be required to place SB 618 Participants onto a waiting list or remove them from a waiting list.

(c) The Unit Classification Committee shall review the SB 618 Participant's progress and case factors at least once a year.

(d) The Prison Case Manager (PCM), as described in subsection 3077.1(a)(1)(D), shall:

(1) Monitor, track, record, and evaluate the SB 618 Participant's participation and completion in the assigned programs.

(2) Attend the SB 618 Advisory Committee meetings to report program status and to make any recommendations for changes in the SB 618 Participant's Life Plan, if appropriate.

(3) Assist the SB 618 Participant in meeting their Life Plan needs and goals.

(e) Six months prior to release, the PCM, the SB 618 Participant, parole representative, and the CCM will meet and revise the Life Plan with an emphasis on the community reentry plan for housing, transportation, and immediate enrollment in community support programs which include, but are not limited to, substance abuse and mental health services, work readiness training and placement.

(f) A SB 618 Participant who no longer wishes to participate in the SB 618 Program or is no longer eligible for retention at the SB 618 programming institutions, will be seen by an SB 618 Advisory Group in the institution or while on parole in the community. Reasons for being determined ineligible while in the program may include, but are not limited to, rule violations in prison with a guilty finding, archive information which if known prior to entry into the program, such as past violence, would have precluded the SB 618 Participant from the program, not following program requirements, and parole violations subsequent to parole. The respective Advisory Group will make a determination regarding the SB 618 Participant's continued participation in the SB 618 Program.

(1) The Advisory Group at the institution shall include:

(A) Associate Warden or designee.

(B) Classification representative or designee.

(C) PCM Coordinator or designee.

(D) SB 618 Participant's assigned PCM or designee.

(E) Division of Community Partnership (DCP) analyst or designee.

(2) The Advisory Group in the parole community shall include:

(A) SB 618 Participant.

(B) SB 618 Participant's assigned:

1. Parole Agent or designee.

2. Community Case Manager or designee.

(C) DCP analyst or designee.

(3) The respective Advisory Group's findings shall be documented on a CDC Form 128-B, (4/74) General Chrono, as described in section 3000 under General Chrono, with a copy placed in the SB 618 Participant's Central File.

(4) An SB 618 Participant who is determined to no longer be eligible for the SB 618 Program, may appeal the Advisory Group decision by utilizing the inmate appeal process as provided in the California Code of Regulations, Title 15, Chapter 1, Article 8, sections 3084 through 3085.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8, and 5054, Penal Code.

New section 3077.4 is adopted to read:

3077.4. Senate Bill 618 Participant Community Services

(a) To meet the objective of providing a state and local response that will support and sustain the Senate Bill (SB) 618 Participant, as defined in section 3000, with his or her rehabilitative efforts, community services, which may be subject to available state and local funding, may be made available to the SB 618 Participant.

(b) The community services which are designed to maintain the SB 618 Participant through discharge from parole or 18 months from release from parole, whichever is the longest period of time, may include, but are not limited to:

(1) Transitional or step-down housing.

(2) Occupational development and job placement.

(3) Outpatient mental health services.

(4) Substance abuse treatment services.

(5) Education.

(6) Life skills counseling.

(7) Restitution and community services.

(8) Case management.

(9) Intermediate sanctions for technical violations of conditions of parole.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.8 and 5054, Penal Code.

Subchapter 4, Article 10

3375. Classification Process.

Subsection 3375(a) is amended to read:

(a) The classification process shall be uniformly applied, commencing upon reception of a person committed to the custody of the ~~director~~ secretary and shall continue throughout the time the individual remains under the ~~director's~~ secretary's jurisdiction. Each inmate shall be individually classified in accordance with this article. Senate Bill 618 Participants, as defined in section 3000 and pursuant to subsection 3077.1(a)(1)(C), shall receive a preliminary classification at a county facility prior to reception at a departmental institution.

Subsections 3375(b) through 3375(k)(2) are unchanged.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.8, 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; and Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; Wright v. Enomoto (1976) 462 F.Supp. 397; Stoneham v. Rushen (1984) 156 Cal.App.3d 302; and Castillo v. Alameida, et al., (N.D. Cal., No. C94-2847.